

### **REMARKS**

The claims have been amended to recite the oxyethylenated esters of sorbitol and of C<sub>8</sub>-C<sub>22</sub> fatty acids of now-canceled claim 18 as surfactants of claim 15, to advance prosecution and without prejudice. The applicants submit the previously presented evidence supports the applicants belief that the presently claimed invention is patentable and a Notice of Allowance is requested.

Attached is a Declaration of Ludivine LAURENT which presents this evidence in the form of a Declaration, in response to the Examiner's apparent requirement for the same.

The Section 103 rejection of claims 15-18 and 20-29 over Amalric (U.S. Patent No. 5,670,471 (referred to by the Examiner as "Almaric")) is traversed. Reconsideration and withdrawal of the rejection are requested in view of the attached and the comments presented herein. The Examiner is further requested to see the Remarks of the Response dated May 3, 2004.

The claimed invention provides a cosmetic composition in the form of an aqueous gel. More specifically, the aqueous gel of the claimed invention contains the following:

a) at least one non-crosslinked acrylic polymer having a C<sub>8</sub>-C<sub>32</sub> hydrophobic chain, in an amount of 0.8 to 20%.

b) as surfactant, at least one oxyethylenated esters of sorbitol and of C<sub>8</sub>-C<sub>22</sub> fatty acids in an amount of less than 1% by weight with respect to the total weight of the composition, the ratio (R) of surfactant to non-crosslinked polymer varying from 1/20 to 1/5, and

c) at least one insoluble conditioning agent selected from silicones, hydrocarbons, fatty alcohols and fatty esters, in an amount of 0.01 to 20% by weight with respect to the total weight of the composition.

The Examiner has relied on Almaric, in part, to teach an alkylpolyglucoside non-ionic surfactant in an amount of 3-4% to assert that the applicants' inclusion of the claimed surfactant, in the claimed amount and at the claimed ratio in the claimed composition, would have allegedly been obvious from the teachings of Almaric. The applicants submit that however that Almaric fails to teach or suggest the inclusion of the presently claimed at least one oxyethylenated esters of sorbitol and of C<sub>8</sub>-C<sub>22</sub> fatty acids, as surfactant, in an amount of less than 1% by weight with respect to the total weight of the composition, wherein the ratio of surfactant to non-crosslinked polymer varies from 1/20 to 1/5. Almaric requires the use of alkylglycosides which are excluded from the presently claimed invention. Almaric therefore teaches away from the presently claimed invention. The claimed invention would not have been obvious over Almaric and withdrawal of the Section 103 rejection based on the same is requested.

For completeness, the applicants note that the applicants previously commented that Almaric teaches, among other things, that their concentrate can be used as pearling agent in order to provide a pearling effect which is homogenous and stable all the time (col. 2, lines 17-19). See, pages 3-4 of the Response filed May 3, 2004. The Examiner's comment on page 4 of the Office Action dated October 6, 2004, to the contrary is not understood and clarification is requested in the event the rejection is maintained.

Moreover, in the event the Examiner continues to reject the claims, the Examiner is requested to clarify the Examiner's reference to "alkyl glycoside" in the Advisory Action of May 17, 2004, which discussed the previous submission of Comparative Tests. The Examiner is requested to appreciate that the Tween 20 of the Comparative Tests is an exemplification of the oxyethylenated esters of sorbitol and of C<sub>8</sub>-C<sub>22</sub> fatty acids.


Moreover, the applicants submit that the Comparative Tests submitted with the Response of May 3, 2004 are in an appropriate form and the Examiner is requested to indicate where the Law, Rules or MPEP require the submission of Comparative Tests in "declaration format", as apparently required by the Examiner's Advisory Action and Office Action of October 6, 2004.

The claims are submitted to be in condition for allowance and a Notice to that effect is requested.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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